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TELEPHONE 252-3300
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August 15, 2006

*ALSO ADMITTED IN TX
**ALSO ADMITTED IN VA

VIA HAND DELIVERY

The Honorable Charles L.A. Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

8/16/06
too
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AUG 15 2006

PSC SC
DOCKETING DEPT.

SC PUBLIC SERVICE
COMMISSION

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RE: Application of United Utility Companies, Inc. for adjustment of rates and charges and modifications to certain terms and conditions for the provision of water and sewer service; Docket No. 2006-107-WS

Dear Mr. Terreni:

Enclosed for filing please find the original and five (5) copies of **Applicant's Motion for Order Prohibiting Introduction or Admission of Surrebuttal Testimony** in the above-referenced matter.

By copy of this letter, I am serving counsel for all parties of record with a copy of same and enclose a certificate of service to that effect.

I would appreciate your acknowledging receipt of this document by date-stamping the extra copy that is enclosed and returning it to me via my courier. If you have any questions or if you need any additional information, please do not hesitate to contact us.

Sincerely,

WILLOUGHBY & HOEFER, P.A.


Benjamin P. Mustian

BPM/amw

Enclosures

cc: Shannon B. Hudson, Esquire
Nanette S. Edwards, Esquire
Duke K. McCall, Jr., Esquire
Jacqueline H. Patterson, Esquire
George K. Lyall, Esquire

RETURN DATE: N/A
SERVICE: Ok too

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2006-107-W/S

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COMMISSION

IN RE:)
)
Application of United Utility Companies,)
Inc. for adjustment of rates and charges)
and modifications to certain terms)
and conditions for the provision of)
water and sewer service.)
_____)

**MOTION FOR ORDER PROHIBITING
INTRODUCTION OR ADMISSION OF
SURREBUTTAL TESTIMONY**

Applicant, United Utility Companies, Inc., (“Applicant” or “UUC”), pursuant to S.C. Code Ann. Regs. R. 103-840 (1976), hereby moves for an order precluding the admission of the surrebuttal testimony of Dr. James Epting, Ms. Elaine King, and Mr. Jon M. Boulet, submitted on behalf of North Greenville University (“NGU”), into the record in the above-captioned proceeding. In support thereof, Applicant would respectfully show as follows:

1. On August 3, 2006, UUC filed a motion with the Commission requesting an order prohibiting the introduction or admission of the direct testimony of Dr. James Epting, Ms. Elaine King, and Mr. Larry Barnwell filed on behalf of NGU. UUC asserted that NGU, in contravention of 26 S.C. Code Ann. Regs. 103-869.C (Supp. 2005) and the notice issued on May 11, 2006, by the Docketing Department of the Commission, did not properly file its direct testimony in the instant docket. Pursuant to the Commission’s notice, NGU was required to prefile its direct testimony with this Commission, and serve all parties on or before July 31, 2006. Such pre-filing and service was permitted to be accomplished by mail, contingent upon the testimony being postmarked on that date. Applicant, in its motion, asserted that it was not

properly served in that NGU's direct testimony was not deposited in the United States Mail until August 1, 2006 – one day after the mandatory deadline set forth by the Commission.

2. NGU has again failed to serve the parties of record in this docket in accordance with the Commission's directives and has, therefore violated the Commission's Rules of Practice and Procedure and state law.

3. The provisions of the Commission's Rules of Practice and Procedure specifically authorize the Commission to establish testimony pre-filing and service deadlines to be adhered to by parties of record. *See* R.103-869.C, *supra*. Pursuant to its May 11, 2006, directive, a copy of which is attached hereto as Exhibit A, NGU and the other parties of record were required to file their surrebuttal testimony with the Commission and to "serve the testimony and exhibits of the witnesses on all Parties of Record on or before August 14, 2006." The Commission further explicitly stated that "[s]urrebuttal testimony and exhibits must be in the offices of the Commission and in the hands of the parties on these dates."

4. Applicant is unaware of whether NGU timely prefiled the surrebuttal testimony of its proposed surrebuttal witnesses with the Commission's Docketing Department on August 14, 2006. UUC does note that NGU states in its letter to Mr. Charles Terreni dated August 14, 2006, that it filed the testimony electronically with the Commission. However, UUC did not receive an electronic or facsimile version of the testimony and a copy of NGU's surrebuttal testimony was not "in the hands" of UUC until August 15, 2006. Attached hereto as Exhibit B and incorporated herein by reference is a copy of the envelope in which NGU served Applicant with a copy of the proposed testimony of its witnesses. As said envelope reflects, it was not deposited in the United States Mail until August 14, 2006.

5. Furthermore, NGU itself attests to its failure to comply with the Commission's directives by its attached Certificate of Service which provides that copies of the testimony were served upon all interested parties "by placing copies of the same in the United States Mail, postage prepaid, on the 14th day of August 2006".

6. NGU has repeatedly failed to comply with the directives, regulations and procedures of this Commission. Applicant submits that the only appropriate remedy is that NGU be denied the right to present the surrebuttal testimony of its proposed witnesses. The rights of the other parties of record to have NGU comply with the same laws, rules and orders binding upon them cannot be ignored without violating the equal protection and due process rights of such other parties.

7. Applicant submits that the relief sought hereby is within the inherent power of the Commission to control the procedures employed in cases before it. Moreover, relief of the nature sought herein is available in matters in the courts of this state when a party fails to cooperate in discovery. See Rule 37(b)(2)(B) SCRC. Accordingly, the same sanction is available to this Commission. See S.C. Code Ann. § 1-23-330(1) (2005). Applicant submits that the pre-filing of testimony under the Commission's rules is a procedure akin to discovery since it informs the parties, in a timely manner prior to hearing, of the nature of another party's case. Accordingly, the testimony of NGU's witnesses should be prohibited from being introduced in the instant case. See Order No. 2002-167, Docket No. 2001-504-E (March 7, 2002) (prohibiting DHEC from presenting witness testimony filed after the pre-filing deadline).

WHEREFORE, having fully set forth its motion, Applicant requests that the Commission (1) issue its order denying NGU the right to introduce the surrebuttal testimony of its proposed

witnesses in this case, and (2) granting Applicant such other and further relief as is just and proper.

A handwritten signature in black ink, appearing to read 'J. M. S. Hoefer', written over a horizontal line.

John M. S. Hoefer, Esquire

Benjamin P. Mustian, Esquire

WILLOUGHBY & HOEFER, P.A.

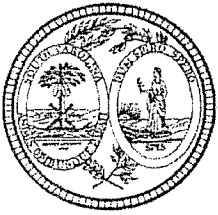
Post Office Box 8416

Columbia, South Carolina 29202-8416

803-252-3300

Attorneys for Applicant

Columbia, South Carolina
This 15th day of August, 2006



Charles L. A. Terreni
Chief Clerk/ Administrator
Phone: (803) 896-5133
Fax: (803) 896-5246

The Public Service Commission State of South Carolina

COMMISSIONERS
Randy Mitchell, Third District
Chair
G. O'Neal Hamilton, Fifth District
Vice Chairman
John E. "Butch" Howard, First District
David A. Wright, Second District
Elizabeth B. "Lib" Fleming, Fourth District
Mignon L. Clyburn, Sixth District
C. Robert Moseley, At-Large

Docketing Department
Phone: (803) 896-5125
Fax: (803) 896-5199

May 11, 2006

REVISED

IN RE: DOCKET NO. 2006-107-W/S – Application of United Utility Companies, Inc. for adjustment of rates and charges and modifications to certain terms and conditions for the provision of water and sewer service

TO: ALL PARTIES OF RECORD

Pursuant to 26 S. C. Code Ann. Regs. 103-869(C)(Supp.2005):

1. **The Applicant** must prefile with the Commission 25 copies of the direct testimony and exhibits of the witnesses it intends to present and serve the testimony and exhibits of the witnesses on all Parties of Record on or before **July 17, 2006** (may be post-marked on this date).
2. **All Parties of Record and the Office of Regulatory Staff** must prefile with the Commission 25 copies of the direct testimony and exhibits of the witnesses they intend to present and serve the testimony and exhibits of the witnesses on all Parties of Record on or before **July 31, 2006** (may be post-marked on this date).
3. The **Applicant** filing **Rebuttal Testimony** must prefile with the Commission 25 copies of the testimony and exhibits of the witnesses it intends to present and serve the testimony and exhibits of the witnesses on all Parties of Record on or before **August 7, 2006** (Rebuttal testimony and exhibits must be in the offices of the Commission and in the hands of the parties on these dates).
4. **All Parties of Record and the Office of Regulatory Staff** filing **Surrebuttal Testimony** must prefile with the Commission 25 copies of the testimony and exhibits of the witnesses they intend to present and serve the testimony and exhibits of the witnesses on all Parties of Record on or before **August 14, 2006** (Surrebuttal testimony and exhibits must be in the offices of the Commission and in the hands of the parties on these dates).

Please be advised that failure to comply with the instructions contained herein could result in your proposed witnesses' testimony and exhibits being excluded in the subject proceeding.

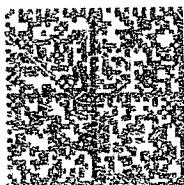
Yours Truly,

Docketing Department

c: Docketing Dept
Legal Dept.
Office of Special Assistants

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AUG 15 2006

Willoughby & Hoefler, P.A.

Mr. John M. S. Hoefler
Willoughby & Hoefler, P.A.
PO Box 8416
Columbia, SC 29202-3416

131998/dkm

LEATHERWOOD WALKER TODD & MANN, P.C.

ATTORNEYS AT LAW

Post Office Box 87

GREENVILLE, SOUTH CAROLINA 29602

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2006-107-WS

IN RE:)
Application of United Utility Companies,)
Inc. for adjustment of rates and charges)
and modifications to certain terms)
and conditions for the provision of)
water and sewer service.)
_____)

CERTIFICATE OF SERVICE

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COMMISSION

This is to certify that I have caused to be served this day one (1) copy of **Applicant's Motion for Order Prohibiting Introduction or Admission of Surrebuttal Testimony** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Shannon B. Hudson, Esquire
Nanette S. Edwards, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, South Carolina 29211

Jacqueline H. Patterson, Esquire
Patterson & Coker, PA
1225 South Church Street
Greenville, South Carolina 29605

George K. Lyall, Esquire
Law Offices of George K. Lyall
4573 Coach Hill Dr.
Greenville, SC 29615

This is to further certify that I have caused to be served this day one (1) copy of **Applicant's Motion for Order Prohibiting Introduction or Admission of Surrebuttal Testimony** via facsimile and by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Duke K. McCall, Jr., Esquire
Leatherwood Walker, Todd & Mann, PC
Post Office Box 87
Greenville, South Carolina 29602
Facsimile number: 864-240-2474

Andrea M Wright
Andrea M. Wright

Columbia, South Carolina
This 15th day of August, 2006.